FSSA 2006, Rules & Regulations
Provisions Related to
Sampling & Analysis

BY –

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Legal Provisions Related To Sampling And Analysis

- *The following provisions provided in the Food Safety and Standards Act (2006) and Food Safety and Standards Rules and Regulations, 2011 are related to sampling and analysis of food and functioning of laboratories*

  - *FSSA 2006 - Section 3,38, 43, 45, 46, 47 of FSS Act, 2006;*
  - *Food Safety and Standards (FSS) Rules, 2011 - Rules 2.4.1 and 2.4.2*
  - *Food Safety and Standards (Laboratory and Sample Analysis) Regulation, 2011*
  - *FSS (Recognition and Notification of Laboratories) Regulation, 2018*

Section 3(j) ***"Food"***

- means any substance, whether processed, partially processed or unprocessed,
- which is intended for human consumption
- and includes primary food to the extent defined in clause (zk), genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance,
- including water used into the food during its manufacture, preparation or treatment
- but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants, prior to harvesting, drugs and
- medicinal products, cosmetics, narcotic or psychotropic substances :

- Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality;

Food Sampling under FSSA 2006:

- Section 3(zk)
- **"primary food"**
- means an article of food, being a produce of agriculture or horticulture or animal husbandry and dairying or aquaculture in its natural form,
- resulting from the growing, raising, cultivation, picking, harvesting, collection or catching
- in the hands of a person other than a farmer or fisherman;

- Section 3(zs) of FSSAI, 2006
- **"sample"**
- means a sample of any article of food taken under the provisions of this Act or any rules and regulations made there under for.

Section 38. Powers of Food Safety Officer.

The Food Safety Officer may –

(a) **take a sample –**

(i) of any food, or any substance, which appears to him to be intended for sale, or to have been sold for human consumption; or

(ii) **of any article of food or substance which is found by him on or in any such premises; which he has reason to believe that it may be required as evidence in proceedings under any of the provisions of this Act or of the regulations or orders made thereunder; or**

(b) seize any article of food which appears to the FSO to be in contravention of this Act or the regulations made thereunder; and

(c) keep it in the safe custody of the FBO such article of food after taking a sample; and **in both cases send the same for analysis to a Food Analyst** for the local area within which such sample has been taken:

Provided that where the FSO keeps such article in the safe custody of the food business operator, he may require the FBO to execute a bond for a sum of money equal to the value of such article with one or more sureties as the FSO deems fit and the FBO shall execute the bond accordingly.

Section 38. Powers of Food Safety Officer.

(2) The FSO may enter and inspect any place where the article of food is manufactured, or stored for sale, or stored for the manufacture of any other article of food, or exposed or exhibited for sale and where any adulterant is manufactured or kept, and take samples of such articles of food or adulterant for analysis.

(3) Where any sample is taken, its cost calculated at the rate at which the article is usually sold to the public shall be paid to the person from whom it is taken.

(4) Where any article of food seized under clause (b) of subsection (1) is of a perishable nature and the Food Safety Officer is satisfied that such article of food is so deteriorated that it is unfit for human consumption, the Food Safety Officer may, after giving notice in writing to the food business operator, cause the same to be destroyed

Rule 2.1.3(4). **Powers and Duties of FSO:**

(*i*) where the FSO is of the opinion or he has reason(s) to be recorded in writing that in the given situation it is not possible to comply with the provision of section 38 (1) (*c*) or the proviso to section 38(1) for reasons **like non availability of the FBO,** the **FSO may seize the adulterant or food which is unsafe or sub-standard or mis-branded or containing extraneous matter, may seal the premises for investigation after taking a sample of such adulterant or food for analysis.**

(*iii*) Furthermore, it shall be the **duty of the FSO**

(*a*) **To inspect**, as frequently as may be prescribed by the DO, all food establishments licensed for manufacturing, handling, packing or selling of an article of food within the area assigned to him;

(*c*) **To procure and send for analysis if necessary, samples of any article of food** which he has reason to believe or on the basis of information received including from a purchaser are being manufactured, stocked or sold or exhibited for sale in contravention of the provisions of the Act, or rules and regulations framed thereunder

(*d*) **To draw samples for purposes of surveillance, survey and research, which shall not be used for prosecution**

Food Laboratory:

1	Primary food laboratories	The Food Authority notifies food laboratories and research institutions accredited by NABL or any other accreditation agency for the purposes of carrying out analysis of samples by the Food Analysts.(≈204)
2	Referral food laboratories	The Food Authority recognizes referral food laboratories for the purposes of carrying out analysis of appeal samples. Presently there are 20 referral food laboratories.
3	National Reference Laboratories	FSSAI has recognised National Reference laboratory (NRL) to set up a country wide standard for routine procedures, validation of such standard procedure / testing methods, development of new methods and ensuring proficiency in testing across the food laboratories with special reference to the risks or food categories. Either a primary food laboratory or a referral food laboratory can be considered for declaration as a NRL. Presently there are 11 NRLs and 2 ANRLs.

Food Laboratory: Cont…

Sec. 3(p) "food laboratory"

means any food laboratory or institute established by the Central or a State Government or any other agency and accredited by NABL or an equivalent accreditation agency and recognised by the Food Authority under section 43;

Sec. 43(1)

The Food Authority may notify food laboratories and research institutions accredited by NABL or any other accreditation agency for the purposes of carrying out analysis of samples by the Food Analysts under this Act

Sec. 45. Food Analysts.

The Commissioner of Food Safety may, by notification, appoint such persons as he thinks fit, having the qualifications prescribed by the Central Government, to be Food Analysts for such local areas as may be assigned to them by the Commissioner of Food Safety:

Sec. 10(5) The CEO shall exercise the powers of the Commissioner of Food Safety while dealing with matters relating to food safety of such articles.

45. Food Analysts.

- **The Commissioner of Food Safety may, by notification,**
- appoint such persons as he thinks fit, having the qualifications prescribed by the Central Government,
- to be Food Analysts for such local areas as may be assigned to them by the Commissioner of Food Safety:
- Provided that **no person, who has any financial interest in the manufacture or sale of any article of food shall be appointed to be a Food Analyst** under this section:
- Provided further that **different Food Analysts may be appointed for different articles of food.**

Sec.43: Recognition and accreditation of laboratories,

- (1) The Food Authority may notify food laboratories and research institutions **accredited by National Accreditation Board for Testing and Calibration Laboratories or any other accreditation agency** for the purposes of carrying out analysis of samples by the Food Analysts under this Act.

- (2) The Food Authority shall, **establish or recognize by notification, one or more referral food laboratory or laboratories** to carry out the functions entrusted to the referral food laboratory by this Act or any rules and regulations made thereunder.

43. Recognition and accreditation of laboratories,

(3) The Food Authority may frame regulations specifying –

- (a) The functions of food laboratory and referral food laboratory and
- the local area or areas within which such functions may be carried out;

- (b) The procedure for submission to the said laboratory of samples of articles of food for analysis or tests,
- the forms of the laboratory's reports thereon and the fees payable in respect of such reports; and

- (c) Such other matters as may be necessary or expedient to enable the said laboratory to carry out its functions effectively.

Advisory Dt.- 15.03.21

To

1. The Commissioner of Food Safety of All States/UTs
2. All Central Licensing Authorities (Delhi/Mumbai/Chennai/Kolkata/Guwahati)

Subject: - Advisory to check the scope of testing of primary notified/referral laboratory recognized under section 43 (1) & (2) of FSS Act,2006 before sending any sample for analysis, reg.

Sir/Madam,

It has come to the notice of this office that samples (including one part of the food sample to be analyzed as per the FBO's right/ request) are being sent to the laboratories not capable of testing the said product/parameter.

2. In this regard, it is advised that the scope of testing of the laboratory may be checked, before sending any sample for analysis for any purpose under the various provisions of the Act, so as to ensure that the analysis reports are legally and technically valid.

3. The broad scope and food categories are mentioned in the validity order available on the FSSAI website. However, to view the detail Product vs. Parameter can be further checked by following steps:

1. Open NABL website (www.nabl-india.org)
2. Click the tab "laboratory search";
3. Click "accredited laboratories" under the laboratory search option;
4. Select country, enter NABL certificate No (TC---), TC No is available in FSSAI validity list for all notified laboratories, which is available in the following link: https://www.fssai.gov.in/cms/food-laboratories.php. Further, the search in NABL website has multiple options apart from using TC No. search. By entering the key words of the laboratory also, it can be searched easily.
5. Detail/Record of the laboratory (Name, address) will be displayed;
6. Click on the "click here to view the scope of Accreditation": the details will be available.
7. Click the hyperlink "TC-No" (certificate No.), where two more tabs are available:

7.1. "Certificate of Accreditation" (1 page document): shows the accreditation certificate issued by NABL to the lab, including the date of issue and expiry of the Accreditation.
7.2. "Scope of Accreditation" (multiple pages): shows the broad discipline, Products and Parameters, test method specification that the lab utilizes for food testing.

Section 46. Functions of Food Analyst.

On receipt of a package containing a sample for analysis from a FSO or any other person,

the Food Analyst **shall compare the seal on the container and the outer cover with specimen impression received separately and shall note the conditions of the seal thereon**:

Provided that **in case a sample container received by the Food Analyst is found to be in broken condition or unfit for analysis, he shall within a period of seven days from the date of receipt of such sample inform the Designated Officer about the same and send requisition to him for sending second part of the sample.**

The Food Analyst shall cause to be analysed such samples of article of food as may be sent to him by Food Safety Officer or by any other person authorised under this Act.

Section 46. Functions of Food Analyst.. Cont…

The Food Analyst shall, **within a period of fourteen days from the date of receipt** of any sample for analysis, send—

- **where such sample is received under section 38 or section 47, to the DO, four copies of the report** indicating the method of sampling and analysis; and
- where such sample is received under **section 40,** a copy of the report indicating the method of sampling and analysis **to the person who had purchased such article of food with a copy to the DO**:
- Provided that **in case the sample cannot be analysed within 14 days** of its receipt, the **Food Analyst shall inform the DO and the CFS giving reasons and specifying the time to be taken for analysis.**

An appeal against the report of Food Analyst shall lie before the DO who shall, if he so decides, refer the matter to the referral food laboratory as notified by the Food Authority for opinion.

Section 46. Functions of Food Analyst.. Cont…

"FORM XI

(See rule2.4.6(3))

CERTIFICATE OF ANALYSIS BY THE REFERRAL FOOD LABORATORY

Certificate No. ……

Certificate that the sample , bearing number ……purporting to be a sample/of …… was received on …… with Memorandum No. …… Dated …… From …… [Name of the Court] …… for analysis. The condition of seals on the container and the outer covering on the receipt was as follows: ……

……

I …… (name of the Director)_ …… found the sample to be …… (Category of food sample) …… falling under Regulation No. …… of Food Safety and Standards(Food Products and Food Additive) Regulations, 2011. The sample was in a condition fit for analysis and has been analyzed on …… (Give date of starting and completion of analysis) …… and the result of its analysis is given below /*was not in a condition fit for analysis for the reasons given below:—

Reason: —

……

Analysis Report: —

(i) Sample Description: — ……

(ii) Physical Appearance: — ……

(iii) Label: — ……

Rule 2.4.2: Analysis of food samples by Food Analyst

On receipt of the package containing a sample of food for analysis

- the Food Analyst or an officer authorized by him **shall compare the seals** on the container and the outer cover **with specimen impression of seal received** separately and shall note the condition of the seal thereon.

- if found to be in broken condition or unfit for analysis, **he shall, within a period of seven days from the date of receipt of such sample, inform the DO** about the same and request him to send the second part of the sample for analysis.

- On receipt of requisition from the Food Analyst, the DO, **shall by the succeeding working day, dispatch to the Food Analyst** for analysis one part of the samples sent to him by the FSO.

Rule 2.4.2: Analysis of food samples.. Cont…

- The analysis report shall be as per Form VII A and
- four copies of the same shall be sent to the DO under whose jurisdiction the FDO functions or the purchaser of article of food.
-
- The analysis report shall be signed by the Food Analyst and
- such report shall be sent within 14 days of the receipt of the sample by the Food Analyst.
- Provided that in case the sample cannot be analyzed within 14 days of its receipt, the Food Analyst shall inform the DO and the Comm. of Food Safety giving reasons and specifying the time to be taken for analysis.

Rule 2.4.2: Analysis of food samples.. Cont…

- Contradiction ?
- Regulation 2.3.1 of FSS(Laboratory and Analysis) Regulation 2011.

- 2. After test or analysis, the certificate thereof duly signed by the Director of the Referral Food Laboratory or the report signed by the Food Analyst shall be supplied forthwith to the sender in Form A or Form B as the case may be.

FORM VII A

[Refer Rule 2.4.4(6)]

REPORT OF THE FOOD ANALYST

Report No._____.

Certified that I _____ (name of the Food Analyst) duly appointed under the provisions of Food Safety and Standards Act, 2006 (34 of 2006), for ____ (name of the local area) have received from _____* a sample of ___, bearing Code number and Serial Number ____ of Designated Officer of ____ area* on _____(date of receipt of sample) for analysis.

The condition of seals on the container and the outer covering on receipt was as follows:

Intact/damaged/missing (delete where inapplicable)

I found the sample to be …….. (category of the sample) falling under item No.___ of Chapter 5 of Food Safety and Standards Regulations. The sample was in a condition fit for analysis and has been analysed on ____ (give date of starting and completion of analysis) and the result of its analysis is given below/ was not in a condition fit for analysis for the reason given below:

Reasons:

……..

Analysis Report

Refer Rule 2.4.2 (5)

(*i*) Sample Description (What it contains)

……..

(*ii*) Physical Appearance of sample/container

……..

(*iii*) Label declaration.

……..

"Form VII A

Report of the Food Analyst

[See rule 2.4.2(5) and 2.4.4 (6)]

Report No._____.

Certified that I _____ (name of the Food Analyst) duly appointed under the provisions of Food Safety and Standards Act, 2006 (34 of 2006), for ____ (name of the local area) received from _____* a sample of ___, bearing Code number and Serial Number ____ of Designated Officer of ____ area* on _____(date of receipt of sample) for analysis.

The condition of seals on the container and the outer covering on receipt was as follows:

_____

I found the sample to be ……. (category of the sample) falling under Regulation No.___ of _____. The sample **was in a condition fit for analysis and has been analysed on ____ (give date of starting and completion of analysis) and the result of its analysis is given below/** was not in a condition fit for analysis for the reason given below:

Reasons:

……

……

Analysis report

(i) Sample Description

……

(ii) Physical Appearance

……

FORM VII A

[Refer Rule 2.4.4(6)]

REPORT OF THE FOOD ANALYST

Report No._____.

Certified that I _____ (name of the Food Analyst) duly appointed under the provisions of Food Safety and Standards Act, 2006 (34 of 2006), for ____ (name of the local area) have received from _____* a sample of ___, bearing Code number and Serial Number ____ of Designated Officer of ____ area* on _____(date of receipt of sample) for analysis.

The condition of seals on the container and the outer covering on receipt was as follows:

Intact/damaged/missing (delete where inapplicable)

I found the sample to be …….. (category of the sample) falling under item No.___ of Chapter 5 of Food Safety and Standards Regulations. The sample was in a condition fit for analysis and has been analysed on ____ (give date of starting and completion of analysis) and the result of its analysis is given below/ was not in a condition fit for analysis for the reason given below:

Reasons:

……..

Analysis Report

Refer Rule 2.4.2 (5)

(*i*) Sample Description (What it contains)

……..

(*ii*) Physical Appearance of sample/container

……..

(*iii*) Label declaration.

……..

FORM B

Report of the Food Analyst

(Refer Regulation (2) of 2.3.1)

Report No._____.

Certified that I _____ (name of the Food Analyst) duly appointed under the provisions of Food Safety and Standards Act, 2006 (34 of 2006), for _____ (name of the local area) received from _____* a sample of ____, bearing Code number and Serial Number _____ of Designated Officer of _____ area* on_____(date of receipt of sample) for analysis.

The condition of seals on the container and the outer covering on receipt was as follows:

_____

I found the sample to be …….. (category of the sample) falling under Regulation No.____ of Food Safety and Standards (Food Products and Food additive)Regulations, 2011. The sample **was in a condition fit for analysis and has been analysed on _____ (give date of starting and completion of analysis) and the result of its analysis is given below/ ** was not in a condition fit for analysis for the reason given below:

Reasons:

……..

……..

Analysis report

(i) Sample Description

……

(ii) Physical Appearance

……

(iii) Label

……

Sl.No.	Quality Characteristics	Name of the Method of the test used	Results	Prescribed Standards as per
				(a) Food Safety and Standards (Food Products and Food additive) Regulations, 2011 (b) As per label declaration for proprietary food (c) As per provisions of the Act , rules and regulations for both the above.

Action by DO on Lab. Report(Rule 2.4.3).

- If the report delivered by the Food Analyst is erroneous,

- he shall forward one of the parts of the sample kept by him to referral laboratory, for analysis and

- if the analysis report of such referral laboratory is to the effect that the article of food is unsafe or sub- standard or mis-branded or containing extraneous matter,

- the provisions of Rule 3.1 shall, so far as may be, apply.

Appeal to the Designated Officer
(Under Sec 46(4) , Rule 2.4.6 of FSSA, 2006)

- An appeal against the report of Food Analyst shall lie before the DO who shall,
- if he so decides, within 30 days from the receipt of such appeal
- after considering the material placed before him
- and after giving an opportunity to FBO to be heard
- shall forward one part of the sample to the referral lab.

- Such appeal shall be in Form VIII
- which shall be filed within 30 days from the date of the receipt of the copy of the analysis report from the Designated Officer.
- Report of the referral laboratory shall be final in this regard.

FORM VIII

[Refer Rule 2.4.6 (1)]

FORM OF APPEAL BEFORE THE DESIGNATED OFFICER

APPEAL BEFORE THE DESIGNATED OFFICER

(PLACE)

In the matter of appeal under section 46 (4) of The Food Safety and Standards Act 2006 (34 of 2006)

AND

In the matter of appeal against the report dated ____ from the Food Analyst

1. No. and date of the report of the Food Analyst against which the appeal is being preferred
2. Brief details of the facts and the grounds on which the report is being challenged
3. Relief being claimed Signature of Appellant

Signature of Appellant

Sample to referral Lab

- The DO shall forward one part of the sample under appropriate condition as specified for the product including transport, to retain the integrity of the sample.
- The cost of analysis of the sample shall be borne by the FBO.
- The remaining samples will also be safely kept under appropriate conditions to prevent deterioration.

14 days' time- limit for Referral Labs Also

दिनांक, १२ जुलाई, 2022
Dated, the 12th July, 2022

आदेश / **Order**

Subject: Compliance with respect to time limit for analysis of samples by FSSAI notified laboratories – reg.

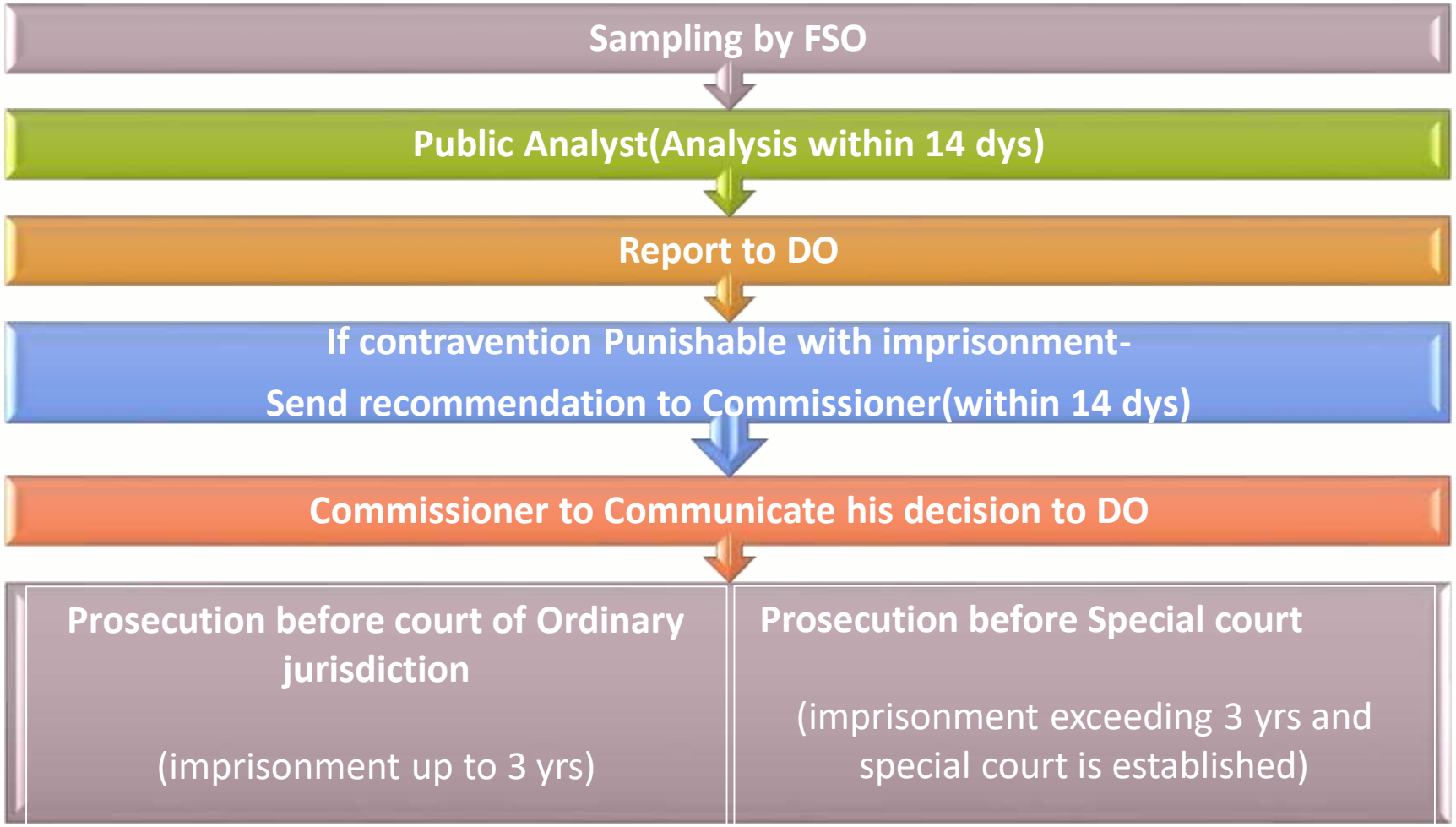
It has come to the notice of Food Authority that several FSSAI notified laboratories are not adhering to the time limit specified for testing of regulatory samples as per FSS Act, 2006 and Rules thereon.

2. In this connection, FSSAI notified laboratories are hereby advised to strictly comply with the timelines especially for regulatory samples as specified below:

(i) Domestic Regulatory samples: The Food Analyst shall issue the signed report **within 14 days** of the receipt of the article of food for analysis as per the format specified under FSS (Laboratory and Sampling Analysis) Regulation, 2011. Provided that, in case the sample cannot be analyzed within 14 days of its receipt, the Food Analyst shall inform the Designated Officer and the Commissioner of Food Safety giving reasons and specifying the time to be taken for analysis.

Further, in case of appeal, Referral laboratory shall issue the report signed by the Director **within 14 working days** of receipt of sample as per the format specified under FSS (Laboratory and Sampling Analysis) Regulation, 2011. Provided that, in case the sample cannot be analysed within 14 working days of its receipt, the Referral laboratory shall inform the Designated Officer and the Commissioner of Food Safety giving reasons and specifying the time to be taken for analysis.

Section 42: Procedure for Launching prosecution


Sampling by FSO
Public Analyst(Analysis within 14 dys)
Report to DO
If contravention Punishable with imprisonment-
Send recommendation to Commissioner(within 14 dys)
Commissioner to Communicate his decision to DO
Prosecution before court of Ordinary jurisdiction
(imprisonment up to 3 yrs)
Prosecution before Special court
(imprisonment exceeding 3 yrs and special court is established)

Section 42. Procedure for launching prosecution.

1. The FSO shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.

2. The Food Analyst after receiving the sample from the FSO shall analyse the sample and **send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer** with a copy to Commissioner of Food Safety .

3. **The DO** after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, **he shall send his recommendations within fourteen days to the Commissioner for sanctioning prosecution**.

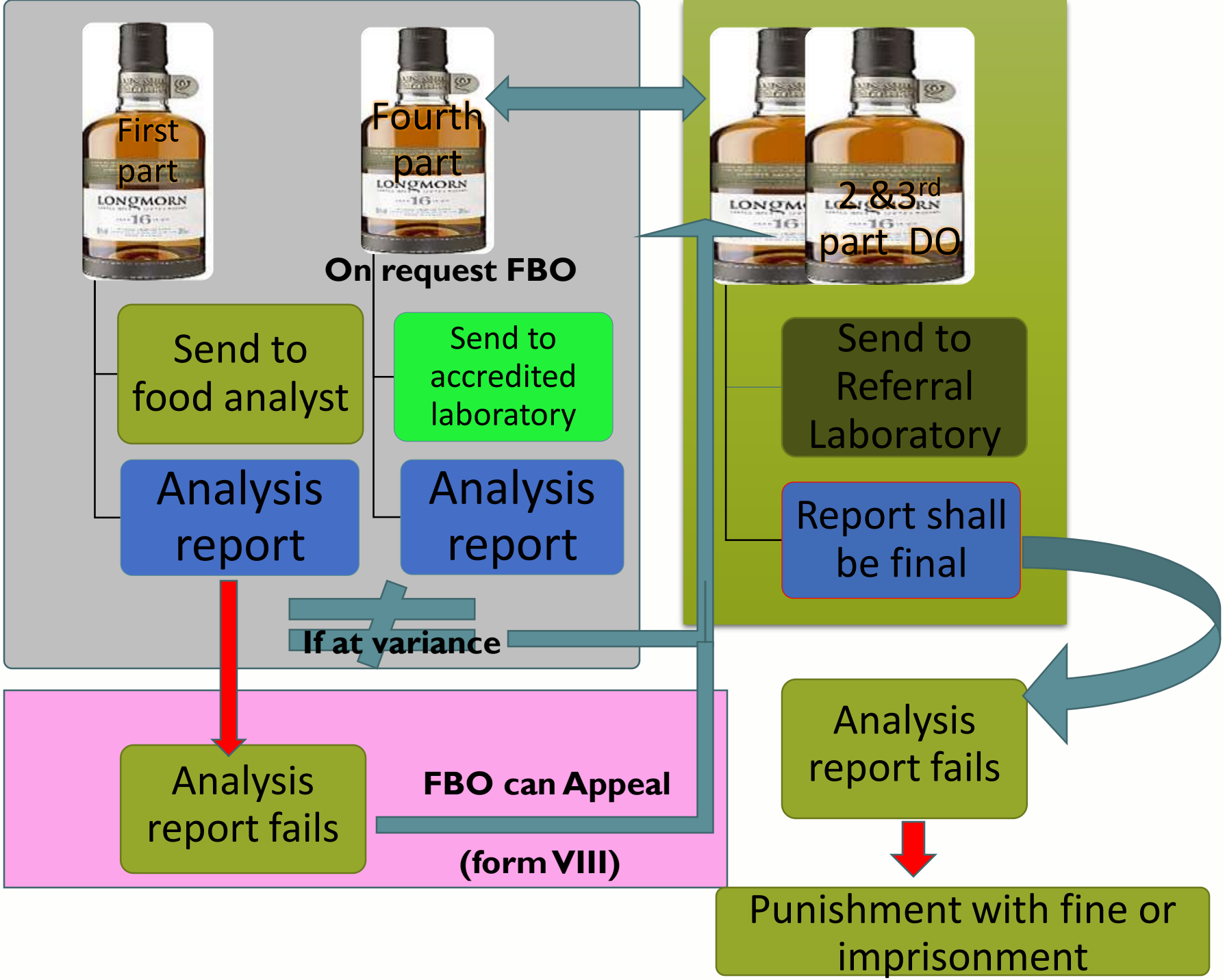
Section 42. Procedure for launching prosecution… Cont...

4) The Commissioner of Food Safety shall, if he so deems fit decide, within the period prescribed by the Central Government, as per the gravity of offence, whether the matter be referred to,-

   a) a court of ordinary jurisdiction in case of offences punishable with imprisonment for a term up to three years; or

   b) a Special Court in case of offences punishable with imprisonment for a term exceeding three years where such Special Court is established and in case no Special Court is established, such cases shall be tried by a Court of ordinary jurisdiction.

5) The Commissioner of Food Safety shall communicate his decision to the DO and the concerned FSO who shall launch prosecution before courts of ordinary jurisdiction or Special Court, as the case may be; and such communication shall also be sent to the purchaser if the sample was taken under section 40


First part
Fourth part
2 &3rd part DO
On request FBO
Send to food analyst
Send to accredited laboratory
Send to Referral Laboratory
Analysis report
Analysis report
Report shall be final
If at variance
Analysis report fails
FBO can Appeal
(form VIII)
Analysis report fails
Punishment with fine or imprisonment

MANNER OF DISPATCHING CONTAINERS OF SAMPLE

To analyst

Two parts to
Designated Officer

Remaining part, if FBO
Request send to accredited Lab

Section 47: Sampling and analysis.

(1) *When a Food Safety Officer takes a sample of food for analysis, he shall –*

a) **give notice in writing** of his intention to have it so analysed to the person from whom he has taken the sample
and to the person, if any, whose name, address and other particulars have been disclosed;

a) except in special cases as may be provided by rules made under this Act, **divide the sample into four parts and mark and seal or fasten up each part in such a manner as its nature permits and take the signature or thumb impression Of the person from whom the sample has been taken in such place and in such manner as may be prescribed by the Central Government:**

Provided that where such person **refuses to sign or put his thumb impression**, the Food Safety Officer shall **call upon one or more witnesses** and take his signature or thumb impression, in lieu of the signature or thumb impression of such person;

Section 47: Sampling and analysis… Cont…

c. (i) send **one of the parts for analysis to the Food Analyst** under intimation to the DO;

(ii) **send two parts to the DO** for keeping these in safe custody; and

(iii) send the remaining part for analysis **to an accredited laboratory**, if so requested by the food business operator, **under intimation to the DO**:

Provided that

- **if the test reports received under sub clauses (i) and (iii) are found to be at variance,**
- **then the DO shall send one part of the sample kept in his custody, to referral laboratory for analysis,**
- **whose decision thereon shall be final.**

Section 47: Sampling and analysis… Cont…

2) When **a sample of any article of food or adulterant is taken**, the **FSO shall, by the immediate succeeding working day, send the sample to the Food Analyst** for the area concerned for analysis and report.

3) Where **the part of the sample sent to the Food Analyst is lost or damaged**,
   - the DO shall, **on a requisition made to him, by the Food Analyst or the FSO**,
   - **dispatch one of the parts of the sample sent to him, to the Food Analyst** for analysis.

2) An article of food or adulterant **seized, unless destroyed, shall be produced before the Designated Officer as soon as possible** and in any case **not later than seven days after the receipt of the report of the Food Analyst:**

Rule 2.4.1: Procedure for taking sample :

- **The FSO while taking sample of food for analysis, shall also follow the procedure specified hereunder;-**
  - Shall call one or more witnesses at the time of lifting of the samples
  - Obtain the signatures from the witnesses in all the forms and documents prepared
  - Serve the notice in Form V A to the business operator then and there
  - in case the FBO discloses that the product has been obtained from the manufacturer, the distributor or supplier, a notice shall also be given to such manufacturer, distributor or supplier,
  - in case where the sample is drawn from an open container, the person drawing the sample shall also draw a sample from a container in original condition of the same article bearing the same declaration, if such container is available, and intimate the same to the Food Analyst.

Rule 2.4.1: Procedure for taking sample : Cont…

- Where a FSO or the purchaser takes a sample of an article of food for analysis, he shall pay, the cost of such sample, to the person from whom the sample is taken, calculated at the rate at which the article is sold to the public.

- Sample of article of Food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers which shall be closed to prevent leakage, evaporation or to avoid entrance of moisture in case of dry substance and shall be carefully sealed.

  Provided, **if a sealed package marketed by the manufacturer/FBO is taken as sample, further sealing in separate containers will not be required.**

- All bottles or jars or other containers containing the samples for analysis shall be properly labeled and the parcel shall be properly addressed. The label on any sample of food sent for analysis shall bear
  - **i. Code number of the sample**
  - **ii. Name of the sender with his official designation**
  - **iii. Date and place of collection**
  - **iv. Nature of articles being sent for analysis**
  - **v. Nature and quantity of preservative, if any, added to the sample.**

Rule 2.4.1: Procedure for taking sample : Cont…

9. The samples will be packed and sealed in the manner prescribed hereunder :

(i) Sample shall be divided into four parts or take four already sealed packages and mark and seal or fasten up each part in such a manner as its nature permits and take the signature or thumb impression of the person from whom the sample has been taken on the label .

(ii) The stopper/cap shall first be securely fastened so as to prevent leakage of the contents in transit

(iii) The bottle, jar or other container shall then be completely wrapped in fairly strong thick paper. The ends of the paper shall be neatly folded in and affixed by means of gum or other adhesive.

(iv) A paper slip of the size that goes round completely from the bottom to top of the container, bearing the signature of the DO or any officer authorized by FSC and code number of the sample, shall be pasted on the wrapper. The signature or thumb impression of the person from whom the sample has been taken, shall be affixed in such a manner that the paper slip and the wrapper both carry a part of this signature or the thumb impression

Rule 2.4.1(7)(a):
Mask all the information relating to the FBO in the label of the sample including brand or trade name and bar code suitably and provide a code number."

Provided that in case the person from whom the sample is taken refuses to affix his signature or thumb impression, the signature or thumb impression of one or more witnesses shall be taken in the same manner

Provided further that in case the paper slip containing the signature of the DO is of such a size that it does not cover completely from the bottom to the top of the container, the FSO shall affix additional sheet/s of paper to the slip containing the signature of the DO so as to cover the container completely and the FSO shall affix his signature on each of the joints for the purpose of identification.

Provided also further that where the purchaser or an Authorized Officer draws the sample no such paper slip shall be required to be affixed

(v) The paper cover shall be further secured by means of strong twine or thread both above and across the bottle, jar or other container and the twine or thread shall then be fastened on the paper cover by means of sealing wax on which there shall be distinct and clear impression of the seal of the sender,

of which one shall be at the top of the packet, one at the bottom and the other two on the body of the packet. The knots of the twine or thread shall be covered by means of sealing wax bearing the impression of the seal of the sender.

10. The containers of the samples shall be dispatched forthwith in the following manner

(i) the sealed container of one part of the sample for analysis along with memorandum in Form VI shall be sent in a sealed packet to the Food Analyst under appropriate condition to retain the integrity of the sample.

(ii) the sealed container of the second and third parts of the sample and two copies of memorandum in Form VI shall be sent to the DO by any suitable means and

(iii) the sealed container of the remaining fourth part of the sample and a copy of memorandum in Form VI shall be sent to an accredited laboratory along with fee prescribed by the Authority, if so requested by the FBO, under intimation to the DO.

Provided that 4th part also shall be deposited with DO if FBO does not request to send the sample to an accredited lab.

(iv) for lifting a sample for testing microbiological parameters, the method of lifting sample, type of container, temperature to be maintained, method of transportation and any other condition to maintain the integrity of the sample shall be notified by the Food Authority from time to time.

11. The FSO shall send to the Food Analyst to whom the sealed container of first part of the sample was sent, **a copy of the memorandum and specimen impression of the seal used to seal the packet and the same shall be sent forthwith.**

12. The FSO or the Authorized Officer, while taking sample for the purpose of analysis under the provisions of the Act **except in the case where the sample is meant for microbiological testing/analysis, may add to the sample, a preservative as may be prescribed** from time to time in the regulations for the purpose of maintaining it in a condition suitable for analysis.

13. Whenever any preservative is added to a sample, **the nature and quantity of the preservative added shall be clearly noted on the label to be affixed to the container**.

14. The quantity of sample of food to be sent to the Food Analyst / Referral lab for analysis shall be as specified in regulations by the Food Authority:

Explanation:

Foods sold in packaged condition (sealed container or package) shall be sent for analysis in its original condition without opening the package as far as practicable, to constitute approximate quantity along with original label.

In case of bulk packages, wherever preservatives are to be added as per the requirement under these rules, the sample shall be taken after opening sealed container or package in the presence of the FBO or in case of his refusal, in the presence of one or more witnesses and the contents of the original label shall also be sent along with the sample for analysis. However, such samples shall not be used for microbiological analysis.

15. Where food is sold or stocked for sale or for distribution in sealed containers having identical label declaration, **the contents of one or more of such containers as may be required to satisfy the quantity prescribed, shall be treated to be a part of the sample**.

16. The quantity of sample of food packaging material to be sent to the Food Analyst /Director of referral lab for analysis shall be as specified below:-

Name of food packaging material	Approximate quantity/surface area to be supplied
1. Food packaging material when sample is taken from manufacturer.	8 x 1000 x 9 sq.cm. surface area."
2. When sample is taken from small consumer packages.	Complete packaging material used for one container.

- **Rule 2.4.1(17)**

  - Notwithstanding anything contained in Rule 2.4.1 (15) the quantity of sample sent for analysis shall be considered as sufficient unless the Food Analyst reports to the contrary

- **Procedure for surveillance sampling**:

FSO,s Report under Rule2.1.3(4)(iii)"(dd):

(Powers and Duties of FSO)

- **Examine the label of any article of food to be sent for analysis** in accordance with the requirements of labelling, advertisement and claims as specified in the regulations made under the FSSA
- and **send the report of non-compliance, if found**, to the Designated officer
- for scrutiny so as to take further proceedings as per the provisions of the Food Safety and Standards Act, or rules made thereunder."

Rule 2.4.1(7)(a):

Mask all the information relating to the FBO in the label of the sample including brand or trade name and bar code suitably and provide a code number."

Secion 40: Purchaser may have food analysed.

(1) Nothing contained in this Act shall be held to prevent **a purchaser of any article of food other than a FSO from having such article analysed by the Food Analyst on payment of such fees and receiving from the Food Analyst a report of his analysis within such period as may be specified by regulations:**

Provided that such purchaser shall inform the FBO at the time of purchase of his intention to have such article so analysed: Provided further that **if the report of the Food Analyst shows that the article of food is not in compliance with the Act or the rules or regulations made thereunder, the purchaser shall be entitled to get refund of the fees paid by him under this section.**

(2) In case the Food Analyst finds the sample in contravention of the provisions of this Act and rules and regulations made thereunder, the Food Analysts shall forward the report to the DO to follow the procedure laid down in section 42 for prosecution.

- If the Purchaser desires **shall give a notice in writing, then and there, in Form V B.**
- The provisions of Rule 2.4.1 shall mutatis mutandis apply except 2.4.1 (9) (i, iv) , 10 (ii, iii), 11, and 16 and **with the modification that the samples shall be divided into 2 parts** or two already sealed packages will be taken each of which will be marked and sealed or fastened up in such a manner as its nature permits and the signature or thumb impression of the person from whom the sample has been taken or a witness will be affixed on the label mentioned in 2.4.1 (8).
- The purchaser will forward **one part to the Food Analyst and the other to the DO** which can be used in the event of appeal by the FBO against the the report of the Food Analyst.
- The Purchaser **shall pay the prescribed fee to the Food Analyst** for carrying out the analysis.
- The Food Analyst shall send to the Purchaser his **report on analysis of the article of food and if the finding of the report is to the effect that the article of food does not conform to the standards prescribed under the Act or the Regulations, the Food Analyst shall also send his report in triplicate, to the DO of the area in which the article of food was purchased, besides sending a copy of the Report to the Purchaser**.
- The report of the Food Analyst shall be sent within 14 days of the receipt of the article of food for analysis and such report shall be in Form VII A.

2.4.5: FBO's right to have the food analysed

1. In case the FBO from whom the sample has been taken
   - or the person whose name and address and other particulars have been disclosed under Rule 2.5 of these rules,
   - desires to have the fourth part of the sample analysed,
   - he shall request the FSO in writing to send the sample to any NABL accredited/ FSSAI notified laboratory for analysis under intimation to the DO.
2. The FSO shall send the sample to a NABL accredited/FSSAI notified laboratory, under intimation to the DO forthwith, in the manner prescribed under Rule 2.4.1.

Provided that the cost of testing by the accredited lab will be borne by the FBO or the person identified under Rule 2.5. The payment shall be made by the FBO through Bank draft or online transfer or treasury chalan or any other suitable means as specified by the DO.

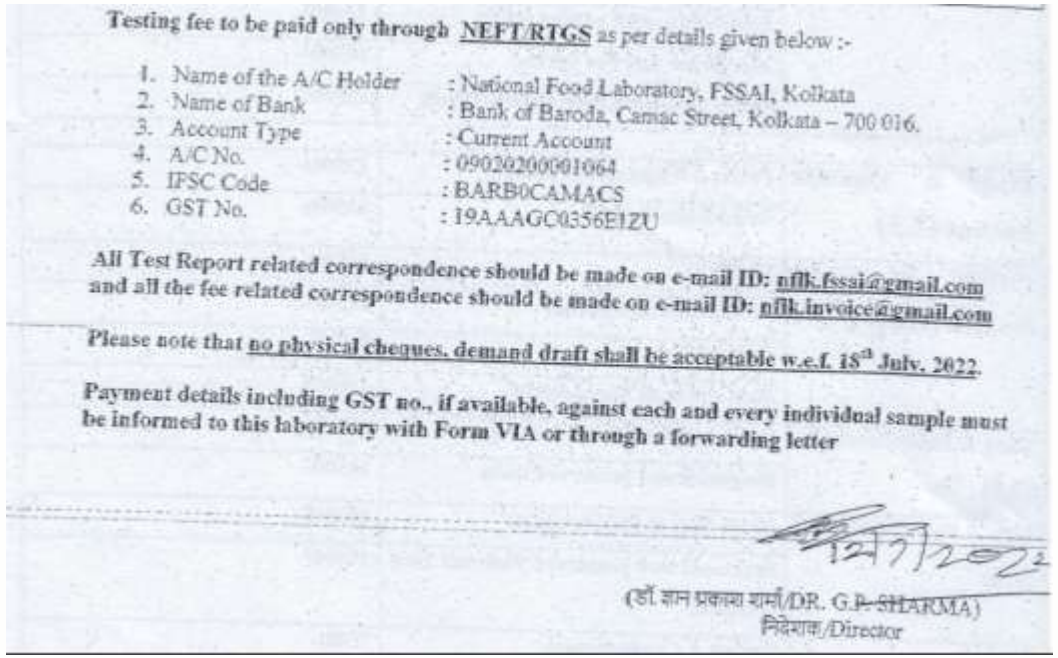
Provided further that the Accredited lab where the FSO will send the sample, should be within the state or the neighboring state wherever available.

2.4.5: FBO's right to have the food analysed. Cont…

3. The Food Analyst in-charge of the accredited laboratory **shall analyse the sample within 14 days from the date of the receipt of the sample.**

Provided that in case the sample cannot be analysed within 14 days from the date of its receipt, the Food Analyst/in-charge of the accredited laboratory, shall inform the DO and the CFS giving reasons and specify the time to be taken for analysis.

4. The Food Analyst shall send four copies of the analysis report to the DO, in the proforma given in Form VII A, indicating the method of analysis.



Testing fee to be paid only through NEFT/RTGS as per details given below :-

1.	Name of the A/C Holder	: National Food Laboratory, FSSAI, Kolkata
2.	Name of Bank	: Bank of Baroda, Camac Street, Kolkata – 700 016.
3.	Account Type	: Current Account
4.	A/C No.	: 09020200001064
5.	IFSC Code	: BARB0CAMACS
6.	GST No.	: 19AAAGC0356E1ZU

All Test Report related correspondence should be made on e-mail ID: nflk.fssai@gmail.com and all the fee related correspondence should be made on e-mail ID: nflk.invoice@gmail.com

Please note that no physical cheques, demand draft shall be acceptable w.e.f. 18th July, 2022.

Payment details including GST no., if available, against each and every individual sample must be informed to this laboratory with Form VIA or through a forwarding letter

12/7/2022

(डॉ. गोप प्रकाश शर्मा/DR. G.P. SHARMA)
निदेशक/Director

2.3 - Seizure of articles of food by the FSO

2.3.1.: Form of receipt for article of food seized by a FSO– For every article of food seized under clause (*b*) of sub-section 1 of Section 38 of the Act, a receipt in **Form II** shall be given by the FSO to the person from whom the article of food was seized.

2.3.2 Form of order/bond not to dispose of the stock: Where the FSO keeps any article of food in the safe custody of the FBO under clause (*c*) of sub-section (1) of Section 38 of the Act.

1. he shall, after affixing the seal, on the article of food, make an order to the FBO in **Form III** and the FBO shall comply with such an order, and

2. he may require the FBO to execute a bond in **Form IV.**

2.2 - Procedure of taking extracts of documents

2.2.1: Manner of taking extracts

1. Where the Food Safety Officer has seized any books of account and other relevant relevant documents in exercise of powers conferred upon him under sub-section (6) of section 38 of the Act, he shall return the same to the person from whom they were seized within a period not exceeding thirty days from the date of such seizure

Provided that before returning the books of account and other documents, the Food Safety Officer shall be entitled for copies thereof or extracts there from, as the case may be.

2. On receipt of such communication from the Food Safety Officer, the person from whom the books of account and documents were seized shall provide the copies or extracts as the case may be, duly authenticated by the Food Business Operator.

3. The extracts shall be taken by the Food Safety Officer or by any person authorized by him.

4. The person making the extracts shall not in any manner cause dislocation, mutilation, tampering or damage to the records in the course of making extracts.

5. The person making extracts shall not make any marking on any record or paper.

2.2.2 Affidavit

1. The extracts or the copies referred to in **Rule 2.2.1** above, shall be initialed on each page of such extracts or copies by the person from whom the books of account and other documents were seized and such extracts or copies so authenticated shall be provided to the Food Safety Officer, accompanied by an Affidavit in **Form I** of the person from whom the books of account and other documents were seized, certifying the authenticity of such extracts or copies.

Proposed SOP
On Lifting Samples For Label Scrutiny And Subsequent Actions

Actions to be taken by Food Safety Officer

In case, claim is required to be ascertained through lab analysis, procedure as laid down as per Rule 2.4 [Sampling and Analysis] of FSS Rules, 2011 shall be followed **with clear instructions to Food Analyst in Form VI. Food Analyst shall provide his/her findings related to claim in the Annexure to Form VII/VIIa [Lab analysis report].** Accordingly, the below SOP is **not** applicable to these cases.

In remaining cases of label scrutiny, below SOP shall be followed:

a) Lifting of samples for label scrutiny.

During inspection of FBO premises, FSO shall lift prepackaged food products [Sample is not necessarily required to be sealed] for label scrutiny along with proper **acknowledgement of FBO** (to be taken as per **Annexure A**).

b) Scrutiny of product labels by FSO.

FSO needs to scrutinize the product labels as per **Annexure B (label scrutiny report)** for compliance with following regulations:

1. FSS (Labelling and Display) Regulations, 2020
2. FSS (Advertising and Claims) Regulation, 2018
3. Product Standards Regulations [All]
4. Any other Provisions covered under the FSS Act, 2006 and Rules and Regulations, orders issued thereunder.

c) Submission of label scrutiny report by FSO to Designated Officer

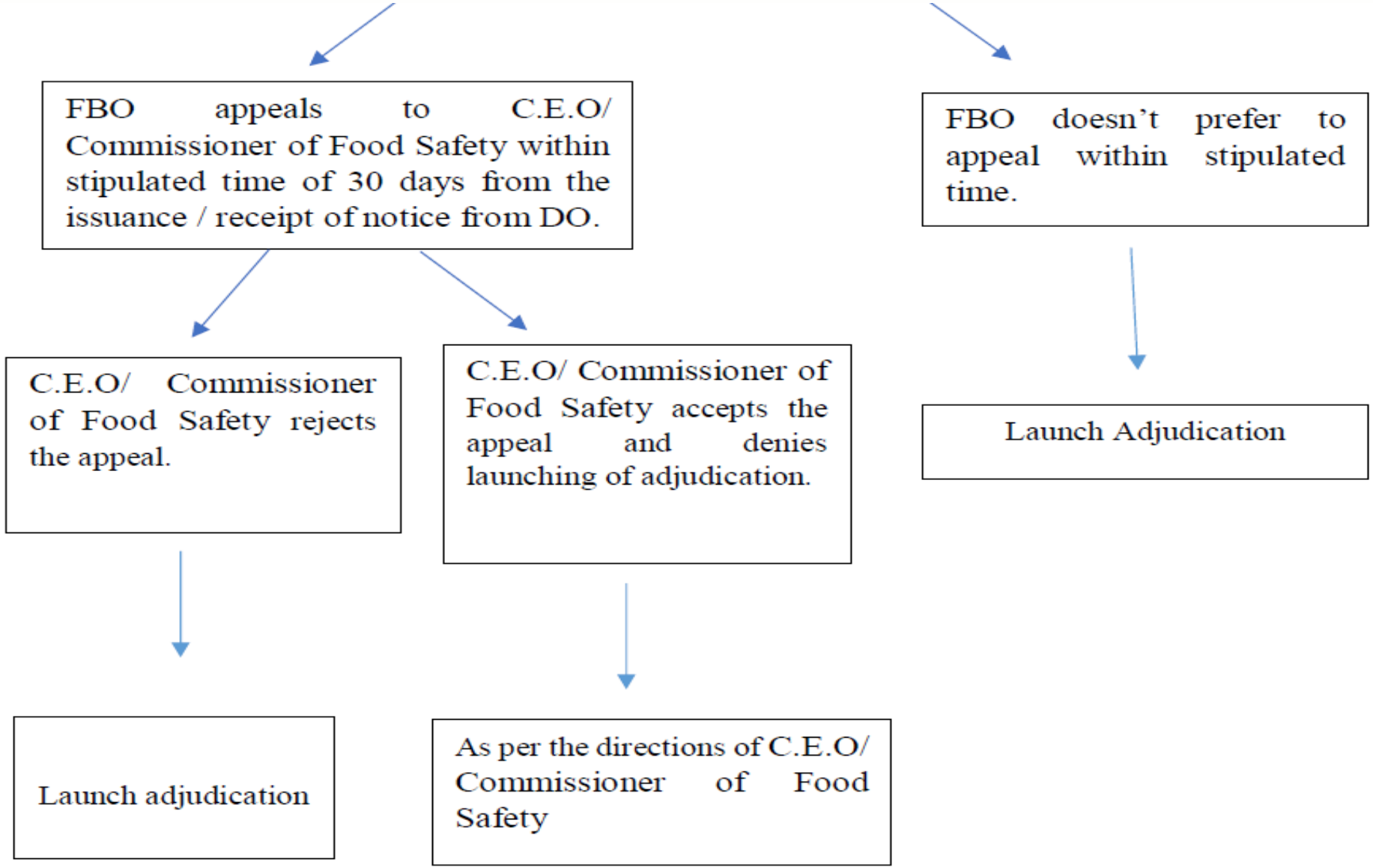
FSO shall submit the label scrutiny report to **Designated Officer within 7 days of lifting samples. FSO shall keep the food sample in the custody of concerned DO.**

Actions to be taken by Designated Officer

d) In case of **minor labelling defects**, while keeping in view the exceptions given to certain categories as per FSSAI Order dated 17-01-2020 quoted in reference or any subsequent Order / directions issued by FSSAI from time to time, improvement notice under Section 32 of FSS Act 2006 needs to be issued to such FBOs by Designated Officer.

e) In all other cases which are **not** covered under minor labelling defects as mentioned in para d) above, the DO/CLA shall launch adjudication against FBO as per Section 36 (e) and in violation of Section 23 and Section 52 of the FSS Act 2006.

f) It is to be noted that provision of exercising appeal against analysis report of primary lab has been given to FBOs in case of enforcement samples. On similar lines, FBO may be granted 30 days of time to appeal against the decision of launching adjudication case against it. Such **appeal** shall be made to C.E.O (for central license) and Commissioner of Food Safety (for state license) within **30 days of receipt of notice from Designated Officer**. Provision of such appeal shall be communicated to FBO while issuing the notice of launching adjudication.


FBO appeals to C.E.O/ Commissioner of Food Safety within stipulated time of 30 days from the issuance / receipt of notice from DO.
FBO doesn't prefer to appeal within stipulated time.
C.E.O/ Commissioner of Food Safety rejects the appeal.
C.E.O/ Commissioner of Food Safety accepts the appeal and denies launching of adjudication.
Launch Adjudication
Launch adjudication
As per the directions of C.E.O/ Commissioner of Food Safety

Annexure A

Acknowledgement by FBO

I _____ on behalf of _____ (Lic. No. _____) situated at _____ acknowledge that the below mentioned products have been collected by FSO Shri/Smt. _____ to check their label for compliance with FSS Act 2006 and rules, regulations made thereunder.

Food product details:

Sr. No.	Name of product	Batch No., Mfg. date & Exp date	Quantity

Signature and Seal of FBO

Signature of FSO

Annexure B

Label scrutiny Report

To, The Designated Officer **Date:**

Date of lifting sample	
Product Profile	
FBO Name	
License Number	
Whether Organic (Yes/ NO)	
Whether Imported (Yes / NO)	
Product's Food Product Category number	
Product's Food Product Sub-Category number	
Food Product Standardised Name	
Whether Any additional claim made on the product	

S.No.	Clause	Clause Number of FSS Regulations	Observation [Compliant / Non-Compliant or Not Applicable]	Remarks
1	Name of Food	5(1) of FSS (Labelling and Display) Regulations, 2020		
2	List of ingredients in descending order by weight of volume	5(2)(b) of FSS (Labelling and Display) Regulations, 2020		
3	Nutritional information per 100g or 100ml or per single consumption pack of the product	5(3) of FSS (Labelling and Display) Regulations, 2020		
4	Per serve percentage (%) contribution to RDA	5(3) (b)of FSS (Labelling and Display) Regulations, 2020		
5	Veg./ Non-Veg. logo and of appropriate dimensions, color and Shape	5(4) of FSS (Labelling and Display) Regulations, 2020		
6	Name and complete address of manufacturer	5(6)(a) of FSS (Labelling and Display) Regulations, 2020		
7	Name & complete address of marketer	5(6)(a) of FSS (Labelling and Display) Regulations, 2020		
8	Name and complete address of the importer	5(6)(b) of FSS (Labelling and Display) Regulations, 2020		
9	Labelling requirements for imported products shall be governed by the Food Safety and Standards (Import) Regulations, 2017	5(11) of FSS (Labelling and Display) Regulations, 2020		
10	Country of Origin for Imported Foods	5(12) of FSS (Labelling and Display) Regulations, 2020		
11	FSSAI logo & License Number	5(7) of FSS (Labelling and Display) Regulations, 2020		
12	Net quantity, Retail Sale Price and Consumer Care details	5(8) of FSS (Labelling and Display) Regulations, 2020		
13	Lot No. / Code No. / Batch identification	5(9) of FSS (Labelling and Display) Regulations, 2020		
14	Date Marking [such as Date of Manufacturing/Packaging and Expiry/Use by or format of date in dd/mm/yyyy in case of products of short shelf life etc.]	5(10) of FSS (Labelling and Display) Regulations, 2020		
15	Food Allergen declaration/warning given or not along with what is contained.	5(14) of FSS (Labelling and Display) Regulations, 2020		
16	Label of pre-packet foods is Non-detachable	4(6) of FSS (Labelling and Display) Regulations, 2020		
	Water added or not except in case where it forms			

Concept note on Masking of Lifted Samples

prior sending to Labs for testing

Rule position:

Masking of pre-packaged legal samples has been made mandatory vide FSSR Amendment-04 dated 16-01-2023 by **insertion** of following clause:

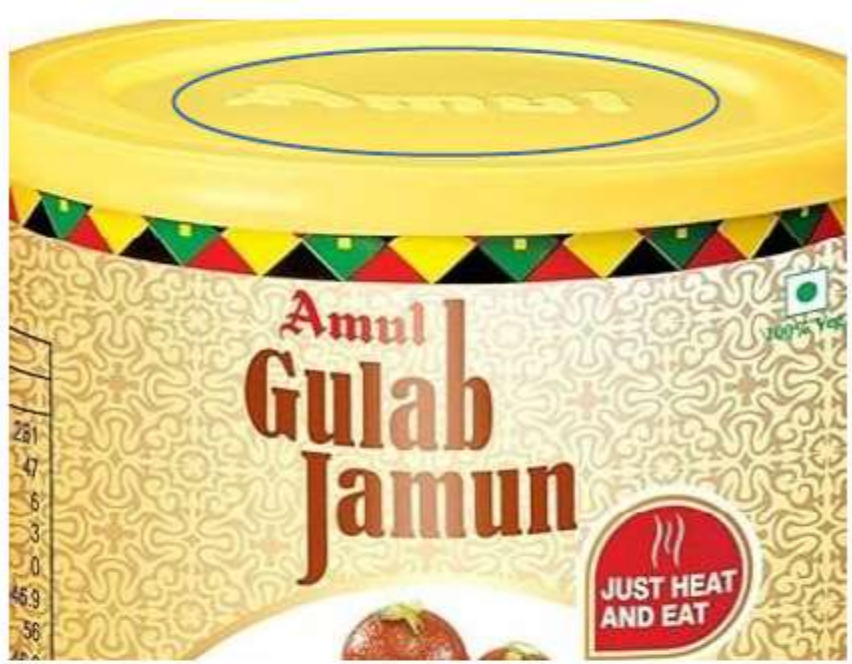
"2.4.1(7)(a) Mask all the information relating to the Food Business Operator in the label of the sample including brand or trade name and bar code suitably and provide a code number."

Challenges being faced by FSOs for implementation of the amended clause related to masking of food samples:

a) **Not possible to mask the food products** where embossing of brand name is on food products:

b) **Not possible to mask the food products** where Brand name is printed on inside portion of food package

c) **Not possible to mask the food products** where Embossing of brand name on the food package



d) Food Samples where masking is possible, even though its tampering cannot be mitigated e.g. **Inks of markers can be wiped off, stickers can be removed, specialised design of food packaging makes it unique to identify the manufacturer.**

Proposal:

In view of above cited examples, it is clear that the above said [Amended] Rule cannot be applied **uniformly** to all Food Samples that are being lifted for sampling. This may result in non-adherence to procedure [as prescribed in FSS Rules] for lifting of samples by the FSOs and consequently, may result in dropping of cases pertaining to failed samples. **Thus, in all, the whole exercise of lifting samples, its testing and related logistics incurred in the process, would be futile.**

Accordingly, **it is proposed that the clause 7 (a) which was inserted after clause 7 vide Amendment-04 dated 16-01-2023 shall be deleted.**

After deletion of clause, procedure specified in Rule 2.4 relating to Sampling and analysis shall remain intact.

FSSAI Direction: Dated; 12 May 2023

- In cases where the **samples are taken by the State FSOs**
- during the course of inspection/drive from the premises of the Centrally Licensed FBOs,
- the consequent proceedings once the lab report is received and after the appeal process(if any has attained finality i.e. the report of referral laboratory has been received) shall be undertaken by the centrally Licensed Authority(CLA).
- The State FSO/DO shall provide all the relevant information/records to the CLA and also provide the necessary assistance to the CLA in this regard.

Inspection of Centrally licensed FBOs

- All the regular inspections including for the complaints/any other references (including complaints received directly from the State Food Authorities) against the centrally licensed FBOs shall be carried out by the CFSOs. However, the State FSOs/DOs, upon request, shall provide all the necessary assistance to the CFSO concerned in this regard.

- Also, in case of any exigency like Food Safety Emergency or due to any administrative constraint, the Regional Director of FSSAI may also request the concerned DOs of the State/UT, under intimation to the concerned Commissioner of Food Safety of the State/UT, to get the premises of any Centrally Licensed FBO inspected though the State FS0 also.

- However, in such cases of inspection of the centrally licensed premises by the State FS0s, the inspection report shall be submitted to the concerned CLA by the State DO and further action on the same shall be taken by the concerned CLA as per the provisions of FSS Act, 2006 and Rules/Regulations made hereunder

In case of any Food Safety Incident/Emergency against the Centrally Licensed FBOs, where immediate action is required, the State Food Authorities may carry out necessary action and inform the concerned Regional Director at the earliest.

In case the State is carrying out any special drive which may include Centrally Licensed FBOs, the State DO may get the premises of such FBOs inspected through the State FSOs, with the prior permission from the concerned CFS of the State/UT and under prior intimation to the concerned Regional Director of FSSAI

In the above cases the report shall be submitted to the concerned CLA by the State DO and further action on the same shall be taken by the concerned CLA as per the provisions of FSS Act 2006.

In cases where the samples are also taken by the State FSO during the course of such inspection/drives from the premises of the Centrally Licensed FBOs, the consequent proceedings once the lab report is received and after the appeal process (if any has attained finality i.e. the report of referral laboratory has been received) shall be undertaken by the CLA.

The State FSO/(DO) shall provide all the relevant information/records to the CLA and also provide the necessary assistance to the CLA in this regard.

77. Time limit for prosecutions. (Limitation)

- no court shall take cognizance of an offence under this Act

▪after the expiry of the period of one year from the date of commission of an offence:

- Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of up to three years.

Action on Report of Referral Lab:

2.4.3: Action by Designated Officer on the report of Food Analyst.

....and if the analysis report of such referral laboratory is to the effect that the article of food is unsafe or sub-standard or mis-branded or containing extraneous matter, the provisions of Rule 3.1 shall, so far as may be, apply

Section 30 (e) : power of Commissioner to sanction prosecution for offences punishable with imprisonment under this Act;

Section 36 (d) Designated officer to make recommendations to the Commissioner of Food Safety for sanction to launch prosecutions in case of contraventions punishable with imprisonment;

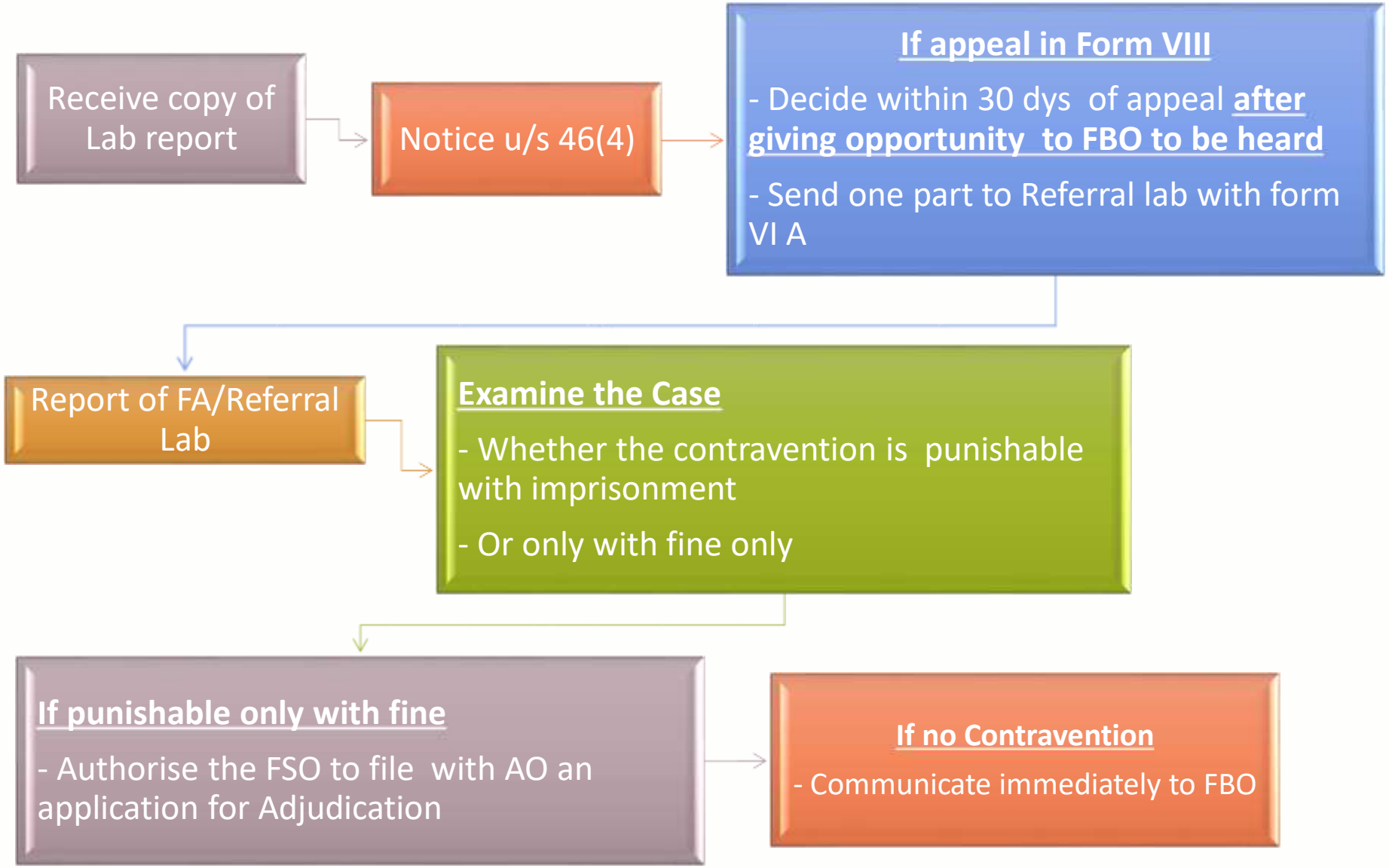
Section 42 (3) The Designated Officer

- in the case of contravention punishable with imprisonment, he shall send his recommendations within 14 days to the Commissioner for sanctioning prosecution.

Rule 3.1.1(5).

The Adjudicating Officer shall have power to hold an inquiry for purpose of adjudicating offences punishable under sections 50, 51, 52, 53, 54, 55, 56, 57, 58, 64, 65, 66 and 67 of the Act.

Rule 3.1: Adjudication Proceedings:


Receive copy of Lab report
Notice u/s 46(4)
If appeal in Form VIII
- Decide within 30 dys of appeal after giving opportunity to FBO to be heard
- Send one part to Referral lab with form VI A
Report of FA/Referral Lab
Examine the Case
- Whether the contravention is punishable with imprisonment
- Or only with fine only
If punishable only with fine
- Authorise the FSO to file with AO an application for Adjudication
If no Contravention
- Communicate immediately to FBO

Thank You!